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CHARLES ELMORE

IN THE

Supreme Court of the United States

October Term, 1936.

No. 139.

THE PEOPLE OF THE STATE OF NEW YORK upon the relation of RICHARD REID ROGERS,

Appellant,

vs.

MARK GRAVES, JOHN J. MERRILL and JOHN P. HENNESSEY, as Commissioners constituting the State Tax Commission of the State of New York,

Appellees.

REPLY BRIEF FOR APPELLANT

RICHARD REID ROGERS,
Relator and Appellant, Pro Se.

The Hecla Press, 225 Varick Street, N. Y. C. Tel. WAlker 5-1480.

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Since relator's brief was filed, the United States Board of Tax Appeals has handed down a decision which will be reported under the title of *Case* v. *Commissioner,* in 34 B. T. A., in which it was decided that the salaries of the employees of the Port of New York Authority were exempt from Federal income taxation. The Port Authority is an incorporated institution organized by the States of New York and New Jersey for the purpose of promoting and improving the port facilities at New York. It controls and operates bridges and tunnels, for the use of which it charges established tariffs, owns an office building in the heart of New York covering a block 800 feet long by 200 feet wide and fifteen stories high, all of which is rented out at a profit, the thirteen upper stories to individual concerns, and has by competition put out of operation at least one privately-owned ferry company. In resisting the efforts of the National Government to tax the salaries of its employees, the State of New York took

exactly the same position as the relator here, viz., that notwithstanding the prosperous condition of the Port Authority and its ability to pay its officers from net earnings; notwithstanding it charges for the use of its tunnels and bridges, and has incidentally destroyed the business of a private ferry company; and notwithstanding its large earnings from offices and lofts rented to private individuals and firms, the main purpose of the Port Authority was and is governmental, and its commercial activities only incidental to the main purpose.

2. Inasmuch as the Attorney General of New York's brief lays great stress upon the fact that the Panama Rail Road Company, with the consent of the Government, is subject to suit, reference is made to the following authorities showing that that circumstance is not a determining factor:

In *Commissioner of Internal Revenue* v. *Harlan*, 80 Fed. (2nd) 660, 662, where it was held that the salary of the attorney for the Golden Gate Bridge and Highway District was not subject to Federal income taxation, the Circuit Court of Appeals for the Ninth Circuit said:

> "Petitioner contends that because section 10 of the Bridge and Highway Act conferred upon the Golden Gate Bridge and Highway District 'the power to sue and be sued,' it changed the governmental character of the agency. The fact that a sovereign may waive its immunity does not alter its nature, or affect the governmental character of the function its agency may be performing."

To the same effect are the decisions of this Court; see:

Trenton v. *New Jersey*, 262 U. S. 182, 191;
United States ex rel. Skinner and Eddy Corporation v. *McCarl*, 275 U. S. 1, 5 and 6.

Respectfully submitted,

RICHARD REID ROGERS,
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